IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1505 OF 2006.

The New India Assurance Co.Ltd. ... Appellant.
Versus.
Chaya Baburao Phadtare & anr. ... Respondents.

Mrs. Arati B.Barve for the Appellant.

Shri Dilip Bodke for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 26th July, 2006.

P.C.:

1. Heard the Advocate for the Appellant. The Appellant is the insurer of the vehicle involved in the accident. The Award made by the Tribunal on a claim petition under section 166 of the Motor Vehicles Act 1988 is in the sum of Rs.58,000/- with interest at 6% per annum.

2. Admittedly leave under section 170 of the Motor Vehicles Act, 1988 has not been granted in favour of the Appellant. There is no defence raised by the Appellant which is covered by sub-section (2) of section 149 of the said Act of 1988.

3. A perusal of the impugned Judgment shows that the insured filed written statement and contested the claim petition on merits by engaging the services of an Advocate. In view of the decision of the Apex Court in the case of National Insurance Co.Ltd. v/s.Nicolletta Rohtagi, reported in (2002) 7 S.C.C. page 456, the Appeal at the instance of the insurer is not maintainable. There is a recent decision of the Apex

Court in the case of R.Mannakatti and another v/s. M.Subramanian and another [2006 (2) T.A.C. 515(SC)]. The Apex Court referred to the aforesaid decision and observed in paragraph 5 of the said decision as under:

> "5. **In view of the aforesaid principles laid down by this Court, in the instant case since the owner of the vehicle contested the claim of the appellants, the insurer could not prefer an appeal, even if the owner of the vehicle joined him as a party-appellant.** Counsel for the respondent Insurance Company submitted that in this case his grievance is to the application of the multiple of 17 which was apparently incorrect. Since we have held that the appeal itself was not maintainable at the instance of the insurer, this cannot be examined by us." (Emphasis supplied).

The said decision of the Apex Court will squarely apply to the facts of this case. Hence the Appeal is not maintainable and the same is dismissed with no order as to costs. The Appellant will be entitled to withdraw the sum of Rs.25,000/- deposited in compliance with section 173 of the Motor Vehicles Act, 1988.

Judge.